Franchise Tax Board

SUMMARY ANALYSIS OF AMENDED BILL

Author: Firebaugh, Chavez, & Wesson Analyst: Marion Mann DeJong Bill Number: AB 923

Related Bills: See Prior Analysis Telephone: 845-6979 Amended Date: 06/04/2003

Attorney: Patrick Kusiak Sponsor: ______

SUBJECT: Employer Provided Health Coverage Credit/Farmworkers/FTB Report to Legislature Annually Regarding Utilization of Credits

X	DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as amended May 1, 2003.
X	AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.
____	AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended ______________________.
____	FURTHER AMENDMENTS NECESSARY.
____	DEPARTMENT POSITION CHANGED TO ______________________.
X	REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED May 1, 2003, STILL APPLIES.
____	OTHER - See comments below.

SUMMARY

This bill would create a credit for employers who provide health care coverage for their agricultural employees. The credit would be allocated from revenue raised by repealing certain sales tax exemptions for taxpayers other than "small farmers."

SUMMARY OF AMENDMENTS

The June 4, 2003, amendments made the following changes:

- Reinstated the sales tax exemptions for "small farmers," thus reducing the amount of revenue available to be allocated among taxpayers via the income tax credit.
- Changed the allocation of the income tax credit from a taxable year to calendar year basis, consistent with the author's original intent.
- Made department recommended technical changes.

These amendments resolved the "Technical Considerations" identified in the department's analysis of the bill as amended May 1, 2003. Except for the "This Bill," "Economic Impact," and "Technical Considerations" discussions, the department's analysis of the bill as amended May 1, 2003, still applies. New "This Bill" and "Economic Impact" discussions are provided. In addition, the "Implementation Considerations" from the prior analysis are reiterated for convenience. The Board position remains pending.

Board Position:			Legislative Director	Date
______ S	______ NA	______ NP		
______ SA	______ O	______ NAR	Brian Putler	6/24/03
______ N	______ OUA	X PENDING		

THIS BILL

This bill would repeal the sales tax exemptions on diesel fuel, racehorse breeding stock, and farm equipment for all taxpayers except "small farmers." Revenue raised from repealing these sales tax exemptions, plus the Employment Development Department's (EDD's) costs to administer the program, would be used to provide a tax credit allocated by EDD to employers that provide health care coverage to their agricultural employees. The Board of Equalization would estimate the amount of revenue raised annually and inform EDD of that amount so that a credit in that amount, plus EDD's cost to administer the program, can be allocated to taxpayers in the form of a franchise or income tax credit.

To be eligible for the credit, the taxpayer must either employ agricultural employees directly or be a labor contractor that employs agricultural employees for use by farmers and:

- Provide those employees with health care coverage and pay at least 80% of the cost of that coverage.
- Apply to the EDD for the credit by January 31 following the end of the calendar year.

The health care coverage must be equivalent to either of the following:

- A health care service plan under the Knox-Keene Health care Services Plan Act of 1975.
- A plan that would qualify under the Employee Retirement Income Security Act of 1974 and provides substantially the same minimum benefits as required under the Knox-Keene Health Care Service Plan Act of 1975.

EDD would do all of the following:

- Determine the amount of allocated credit for each taxpayer who applied by multiplying the revenue raised by repealing the sales tax exemptions plus EDD's costs to administer the credit by a ratio of the amount the taxpayer paid for health care coverage for agricultural employees and their dependents to the total amount all taxpayers who applied for the credit paid for health care coverage.
- Provide written notification of the credit amount to each taxpayer by February 28th of each calendar year.
- Provide an annual list to the Franchise Tax Board (FTB), preferably on a computer readable form.

Unused credit amounts could be carried forward for six years. Fraudulent credit claims would be punishable by a criminal penalty of up to one year in jail and a fine of up to $60,000.

EDD would be allowed to charge each taxpayer applying for the credit a fee to cover the costs of administering the credit.

FTB and EDD would report annually to the Legislature regarding the utilization of this tax credit.

IMPLEMENTATION CONSIDERATIONS

Since EDD would allocate the credit among taxpayers, implementation of the credit would not significantly impact the department. Implementing this bill would require some changes to existing tax forms and instructions and information systems, which could be accomplished during the normal annual update. In addition, this bill would require an annual report to the Legislature.

Department staff has identified concerns regarding the criminal penalty for fraudulent credit claims. Since this penalty is based upon the criminal penalty for tax evasion administered by FTB, it appears that FTB is to assess the penalty. However, EDD would have the information required for determining whether a penalty is warranted. Amendments are needed to clarify how the penalty is to be implemented and which department is responsible for assessing the penalty and resolving any disputes arising from its assessment.

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue losses.

Revenue Impact of AB 923 (As amended June 4, 2003) Tax Years Beginning On or After January 1, 2004 Enactment Assumed After June 30, 2003 $ Millions			
	2004/05	2005/06	2006/07
Revenue Impact	–$46.5	-$51.5	-$54.5

This estimate does not account for changes in employment, personal income, or gross state product that could result from this measure. The estimate assumes that a large percentage of farmers will apply to the Employment Development Department for the allocated credits.

The estimated revenue loss for this bill decreased from the prior analysis. For example, fiscal year 2004/2005 decreased from $50 million to $46.5 million. This change resulted from the following factors:

- the June 4, 2003, amendments reduced the amount of revenue available to be allocated among taxpayers via the income tax from $79 million to $64 million,
- the estimated usage rate was increased from 70% to 75%, and
- EDD's estimated costs to administer the program were included in this estimate.

Revenue Discussion

The Board of Equalization has indicated that complete repeal of the sales and use tax provisions as provided by this bill would increase the sales and use tax revenues by $79 million. Reinstating the sales and use tax exemption on the purchase of diesel fuel, tractors, and agricultural equipment by small farmers would reduce this amount by $15.2 million. Thus, sales and use tax revenues available for the franchise or income tax credit would be about $64 million ($79 million minus $15 million). EDD has indicated that their costs would include a one-time set-up cost of $1.74 million with on-going annual costs of $285,000. It is assumed that only 75% of the taxpayers would have sufficient tax liability to use the credits. The first year impact considers the fact that some fiscal-year taxpayers would not be able to use the full amount of credit until after June 30, 2005. The unused credits would be carried forward to the succeeding six years. We assume that the exemption repeal will extend beyond 2005.

The first year impact was arrived at as follows:

Aggregate amount of the credits due to the repeal	$64,000,000
EDD cost for the first year	$2,000,000
Total cost	$66,000,000
Times the percent of positive income taxpayers	× 75%
Equals the qualified credit amount	$49,500,000
Minus the amount due to late fiscal filers	–$3,000,000
Equals the first-year impact	$46,500,000

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